

Message Text

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ACTION AF-08

INFO OCT-01 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00 EB-07

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O 231439Z APR 76

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC IMMEDIATE 9172

UNCLAS NAIROBI 3961

E.O. 11652: N/A

TAGS: EINV, KE, US, BGEN

SUBJ: PROPOSED AMENDMENT TO FOREIGN INVESTMENT PROTECTION ACT

REF STATE 098096

1. WE UNDERSTAND AMENDMENT HAS JUST PASSED PARLIAMENT BUT NEEDS PRESIDENT'S APPROVAL. ATTEMPTING TO CHECK.

2. EMBOFFS HAVE BEEN DISCUSSING IMPLICATIONS OF AMENDMENT WITH GOK OFFICIALS, PARTICULARLY MINISTRY FINANCE AND PLANNING (MOFP), FOR LAST TWO DAYS. WE WERE TOLD BY NICHOLAS NG'ANG'A, PERM SEC, MOFP, THAT AMENDMENT POSES NO REAL CHANGE IN PROTECTION TO FOREIGN INVESTMENT. RATHER, ATTORNEY GENERAL'S OFFICE HAS WANTED TO TIGHTEN UP LANGUAGE OF ACT SO AS TO AVOID POSSIBLE SUITS BY FOREIGN INVESTORS WHO MIGHT INSIST ON REPATRIATING CAPITAL GAINS, OR APPRECIATION OF ASSETS (I.E., CAPITAL PROFITS) IMMEDIATELY UPON LIQUIDATION. IN REALITY FOREIGN INVESTORS HAVE NEVER HAD SUCH GUARANTY IN KENYA AND MOST HAVE ALWAYS UNDERSTOOD THAT SUCH REPATRIATION WOULD BE SUBJECT TO NEGOTIATION, IN TURN AFFECTED BY EXISTING LEVEL FOREIGN EXCHANGE, AND OTHER FACTORS. REPATRIATION WOULD BE PERMITTED; ISSUE WOULD BE TIMING.

3. ONLY AMENDMENT TO FIPA WHICH MAY REPRESENT CHANGE IN UNCLASSIFIED

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PREVAILING POLICY RE REPATRIATION OF INVESTMENT IS

REQUIREMENT THAT AMOUNT OF EQUITY INVESTMENT BE NOTED ON
CERTIFICATE OF APPROVED ENTERPRISE IN KENYAN CURRENCY.
QUESTION ARISES WHAT AMOUNT INVESTOR IS PERMITTED TO
REPATRIATE: THE ORIGINAL DOLLAR VALUE OF HIS INVESTMENT
OR THE CURRENT DOLLAR VALUE OF THE LOCAL CURRENCY
AMOUNT STATED ON THE CAE.

4. EMB UNABLE TO CLARIFY LATTER POINT IMMEDIATELY BUT
PLANS TO DISCUSS GOK INTERPRETATION WITH TREASURY OFFICIALS
AGAIN APRIL 24.

5. NOTE: AS THIS MESSAGE BEING TYPED,
POLITICAL OFFICER CONFIRMED WITH FIRST CLERK OF NATIONAL
ASSEMBLY THAT STATUTE LAW (MISCELLANEOUS AMENDMENTS)
BILL, 1976, PASSED PARLIAMENT LATE YESTERDAY. OMNIBUS
BILL INCLUDED AMENDMENT OF FIPA. ATTORNEY GENERAL WILL
NOW FORWARD ACT TO PRESIDENT FOR ASSENT, PROCESS WHICH
USUALLY TAKES ONE WEEK, AFTER WHICH ACT BECOMES LAW.
AIRPOUCHING TEXT OF AMENDMENT.
MARSHALL

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Message Attributes

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